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April 29, 2008

**VIA HAND DELIVERY**

Tennessee Department of Environment and Conservation  
Appeal of Enforcement Order  
TDEC-OGC  
20<sup>th</sup> Floor L&C Tower  
401 Church Street  
Nashville, Tennessee 37243-1548

**RECEIVED**  
APR 29 2008

DEPT OF ENVIRONMENT AND CONSERVATION  
OFFICE OF GENERAL COUNSEL

Re: Director's Order, Case No. WPC07-0197  
In the Matter of Ronald W. Ogle d/b/a Palisades at DuPont Subdivision

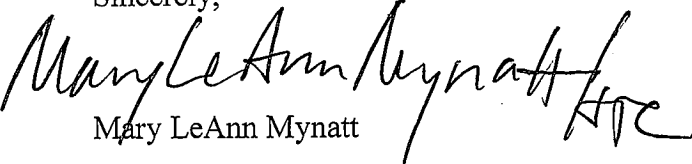
To Whom It May Concern:

Enclosed please find a Notice of Appeal and Petition for Hearing on behalf of Ronald W. Ogle d/b/a Palisades at DuPont Subdivision pursuant to the Director's Order listed above.

Also enclosed is a copy of the Notice to be stamped "filed" and returned to me.

Please contact me with any questions or concerns.

Sincerely,

  
Mary LeAnn Mynatt

MLM:nts

Enclosure

cc: Paul E. Davis, P.E.

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
WATER QUALITY CONTROL BOARD**

In the matter of

RONALD W. OGLE  
d/b/a PALISADES AT DUPONT  
SUBDIVISION

Petitioner.

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Case No. WPC07-0197

**NOTICE OF APPEAL AND PETITION FOR HEARING**

Petitioner Ronald W. Ogle d/b/a Palisades at DuPont Subdivision ("Ogle") hereby appeals the Director's Order and Assessment issued on April 8, 2008, pursuant to the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-110, as well as the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-320. In support of its appeal, Ogle would show the following:

1. Ogle is a sole proprietor qualified to do business in Tennessee. Ogle has a proven record in building and development, and is currently developing a residential subdivision on property located in Sevier County (the "Subdivision").
2. On April 8, 2008, the Tennessee Department of Environment and Conservation, Division of Water Pollution Control ("TDEC") issued an Order and Assessment. Under the Order, TDEC ordered Ogle to take certain actions at the Subdivision and pay a civil penalty.
3. The actions ordered by the Director are not necessary to protect the public health, safety or the environment under the Act, are not reasonable, and/or are otherwise inappropriate under the circumstances.
4. Similarly, the time periods provided for the actions ordered by the Director are not necessary to protect the public health, safety or the environment under the Act, are not reasonable, and/or are otherwise inappropriate under the circumstances.

5. Further, the civil penalty sought by the Director is excessive and unreasonable under the circumstances.

6. In the alternative, the actions of the Division of Water Pollution Control in ordering work at the Subdivision and in issuance of the Notices of Violation at issue were:

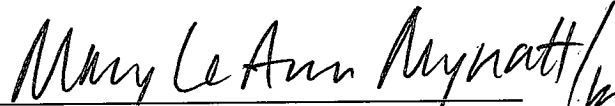
- (a) arbitrary, capricious or an abuse of discretion;
- (b) an unwarranted exercise of discretion;
- (c) made upon unlawful procedures;
- (d) in excess of the statutory authority of the agency;
- (e) unsupported by substantial and material evidence;
- (f) contrary to the Act and its implementing regulations; or
- (g) otherwise contrary to law.

7. Ogle hereby appeals the Director's Order and Assessment issued by the Division of Water Pollution Control.

WHEREFORE, Ogle respectfully requests that the Water Quality Control Board take jurisdiction over this appeal, that Ogle be allowed discovery as provided in the Uniform Administrative Procedures Act and the Water Quality Control Act, that it be afforded a hearing, and, after all due proceedings, that the Board:

- A. Withdraw the Director's Order and Assessment; and
- B. Grant such further relief as to which Ogle may prove itself to be entitled.
- C. Allow Ogle to amend this Petition as necessary.

Respectfully submitted,

  
\_\_\_\_\_  
MARY LEANN MYNATT (#15856)  
ASHLEY MEREDITH LOWE (#20867) *J. Lowe*  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC  
900 South Gay Street, Suite 2200  
Knoxville, Tennessee 37902  
(865) 549-7000

*Attorneys for Petitioner Ogle*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the following counsel for parties in interest herein by delivering same to the offices of said counsel, or by mailing same to the offices of said counsel by United States Mail with sufficient postage thereon to carry the same to its destination.

Tennessee Department of Environment and Conservation  
Appeal of Enforcement Order  
TDEC-OGC  
20<sup>th</sup> Floor L&C Tower  
401 Church Street  
Nashville, Tennessee 37243-1548

Paul E. Davis, P.E., Director  
Tennessee Department of Environment and Conservation  
6th Floor, L&C Annex  
401 Church Street  
Nashville, Tennessee 37243-1534

  
\_\_\_\_\_  
Attorney

**TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
WATER QUALITY CONTROL BOARD**

In the matter of	)	
	)	
RONALD W. OGLE	)	Case No. WPC07-0197
d/b/a PALISADES AT DUPONT	)	
SUBDIVISION	)	
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Petitioner.	)	

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- C. Allow Ogle to amend this Petition as necessary.

Respectfully submitted,

*Mary LeAnn Mynatt*  
MARY LEANN MYNATT (#15856)  
ASHLEY MEREDITH LOWE (#20867) *JT Cole*  
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*Attorneys for Petitioner Ogle*



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